

Legal Fatherhood

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What Fathers Should Know

What is paternity?

"Paternity" is another way of saying you are the legal parent. The legal process to make you the legal father is called "paternity establishment." Establishing paternity allows you to have your name on your child's birth record.

Why is it important to establish paternity?

Your baby has a right to a mother **and** a father, even when you are not married. When your name is added to your child's birth record, your child has special rights. These rights may include:

- Child support
- Health insurance
- Tribal enrollment rights (for Native American children)
- Inheritance rights
- Social Security benefits if you die or become disabled
- Access to your family's health history (by your child's doctor). This is important, as conditions such as diabetes and sickle cell run in families.

When legal fatherhood is established,

- Your parental rights have to be considered before your baby can be placed for adoption
- You have the right to ask the court to make decisions about your child (custody) and to visit your child (physical placement)
- You have the right to submit a parenting plan to the courts.

How is paternity legally established?

There are four ways paternity may be established.

1) Voluntary Paternity Acknowledgment

If you are sure you are the father, the easiest way to establish paternity is for you and the mother to sign a *Voluntary Paternity Acknowledgment* form after your baby is born. Completing and mailing this form

to Vital Records establishes full paternity. (The mailing address for Vital Records is on the form.)

Your name will be added to the birth certificate.

Completing this form alone does not create a child support order. However, it will allow a court to order child support if necessary. This form alone does not give you custody or periods of physical placement (visitation). It does give you the right to ask the court for custody and physical placement.

If you want genetic testing, you should not sign the form until the tests are done. You may ask your local child support agency for genetic tests before you sign the *Voluntary Paternity Acknowledgment* form. See page 4 for more information about genetic tests.

You and the child's mother may sign the *Voluntary Paternity Acknowledgment* form and have it notarized at the hospital when your baby is born. All hospitals in Wisconsin have this form. Your midwife may also have this form.

The *Voluntary Paternity Acknowledgment* form is also available from your county or tribal child support agency. Your child support agency can help you with this form. To find the telephone number for your child support agency, look in your phone book under "County Government" or under the tribal name.

The *Voluntary Paternity Acknowledgment* form is also available at your local register of deeds office and the state Vital Records Office in Madison.

2) Legal Agreement

You and the child's mother may stipulate (legally agree) to establish paternity. The stipulation may also include formal arrangements for paying child support and arrangements for making decisions about your child (custody) and visiting your child (physical placement). The courts need to approve this agreement.

Your child support agency can explain how to file an agreement without a court hearing. You may ask the child support agency for genetic tests before you sign this agreement. (See page 4 for more information about genetic tests.)

3) Court Ruling

If you are named as the possible father and you do not agree, a court hearing will be scheduled. The court will make a ruling about paternity. You will be notified to appear at this hearing. At the hearing, your rights and responsibilities will be explained to you. If you want genetic testing, you should ask the court for genetic tests.

If you do not appear at the scheduled time and place, the court may still enter a paternity ruling without you being present and name you as the father. This is called a "default judgment." You will have 30 days after the court ruling to explain to the court why you did not appear. After the 30 days, paternity is established and the court can order child support.

4) Acknowledgment of Marital Child (Legitimation)

If you and the child's mother get married after your child is born, you and the mother should sign an *Acknowledgment of Marital Child* form (*Legitimation*) to establish paternity. You can get this form at your local child support agency or from the state Vital Records Office. Both you and the mother should sign this form in front of a notary and mail it to the state Office of Vital Records in Madison. (The mailing address for Vital Records is on the form.) The *Acknowledgment of Marital Child* form gives you and your child the same rights as if you had been married before the child was born.

If I am not sure I am the father, what should I do?

If you are not sure, **do not sign** the *Voluntary Paternity Acknowledgment* form. Once this form is filed, it has the same effect as a court judgment. You will be considered the legal father, and a court can order you to pay child support. If no legal process has been started, contact your local child support agency and ask about genetic tests. (Child support agencies are listed in the phone book under “county government” or the tribal name.)

If a legal process has been started, you should appear at the hearing at the scheduled time. During the legal process, the child support agency or the court will order genetic tests. If the tests show that you are not the father, your case will be dismissed. If the tests show a 99% or greater probability of paternity, you will be presumed to be the father under Wisconsin law.

If I believe I am the father, what should I do?

Even if you plan to help your baby and the mom, it is important to legally establish paternity. If the mother does not agree, you can go to court to establish paternity. Your child support agency may be able to help you with this. By establishing paternity, your rights and your child's rights are protected. (See page 1 for information about these rights.) Fathers can build a positive relationship with their children even if they are not in a relationship with the mother. There may be classes and support groups in your area for dads.

When can paternity be established?

Paternity can be established any time after the child is born and before the child's 19th birthday. However to ensure your and your child's rights, it is best to determine paternity as soon as possible.

Should I still establish paternity even if I live with my child's mother?

Yes. You may believe there is no need to establish paternity now because you live with and plan to help the mother and your child. This might change. Therefore, it is important to legally establish paternity now. Establishing paternity guarantees your and your child's rights. (See page 1 for information about these rights.)

Her family does not want me around, or she says the baby is not my child. What should I do?

If you believe you are the child's father, it is your right and responsibility to establish paternity. That is true even if the mother or her family does not want you around. The child support agency may be able to help you with the process of establishing paternity, or you may hire an attorney.

Will I need a lawyer?

The child support agency attorney may bring a court action to establish paternity but **cannot** represent you. When you are named as a possible father, you might want legal representation. If you are under 18 and named as a possible father, the court will appoint an attorney for you unless you have your own attorney. If you are 18 or over, you may hire a lawyer.

Genetic tests . . . What do they do?

Genetic (DNA) tests can be done either by a "buccal swab" test or with a blood test. Most places do the swab test instead of a blood test. For the swab test, cotton swabs are rubbed inside the mouth to obtain cell samples. In both types of testing, samples are taken from you, the mother and the baby. The results from these tests will determine the probability of a specific man being the father. The court uses the test results to rule on paternity when the father or mother are not sure or do not agree on the paternity of the child. If the tests show a 99% or greater probability of paternity, you will be presumed to be the father under Wisconsin law. You have the right to object to the test results in court. **If you are not sure if you are the father, you should ask for genetic testing.**

Who pays for these genetic tests?

The child support agency pays for the tests until paternity is established. If the tests show you are the father, you and/or the mother may be ordered to pay for the tests. If the tests show you are not the father, you will not be charged for the tests.

Will I have to pay child support?

If you are found to be the father, you will be expected to support your child.

What if I am in high school?

If you are in school, the court may decide to wait to set support until after you graduate and are working. The court will balance your need for an education with the needs of your child. If you are under 18, the court may order your parents to help with the support.

What if I do not have a job or do not make much money?

The court tries to be fair when setting child support payments so that everyone has enough money to live on. The court may consider your ability to pay when setting the support. The court may order you to look for work if you are unemployed and able to work. The court may send you to the Children First Program, which can help you find a job.

For more information about child support, see the booklet *Child Support - What the Paying Parent Needs to Know*. Other child support publications are listed on page 6.

What does paternity have to do with Wisconsin Works (W-2), Temporary Assistance for Needy Families (TANF), Medicaid, child care and food shares (food stamps)?

If your child or your child's mother receives benefits from the W-2 or TANF Program and you are ordered to pay child support, you might be able to participate in the W-2/TANF Noncustodial Parent Program. This program can help you find a job.

When your child or your child's mother receives benefits from the W-2, TANF, Medicaid, child care or the Food Shares (food stamps) programs, the state requires that the county or tribe establish a child support order. You will be asked to cooperate with the child support agency.

If you take part in the W-2 or the Food Shares (food stamps) programs, you will have to cooperate with the child support agency. If you owe past-due child support, you and your child support agency will have to agree to a payment plan.

Could I go to jail?

If you purposely refuse to pay the child support as ordered by a court, you could be charged with contempt of court or criminal non-support.

Can I get custody of my child?

Under Wisconsin law, when a child's parents are not married, the mother has sole custody (to make legal decisions for the child) until the court orders otherwise. You do not need to have legal custody to visit your child.

If you and your child's mother do not agree on legal custody, you may ask the court for an order to share legal custody.

If you and your child's mother do not agree on visitation (physical placement), you may ask the court for a physical placement order.

For court orders, both parents will have to prepare a "Parenting Plan." The court would then decide what is best for the child. Custody and placement issues may be discussed with your family court counseling service. Contact your family court commissioner's office for counseling services.

Other Child Support Publications

The following publications are available from your child support agency (listed in your phone book under “County Government” or tribal name). These items are also on the Internet at **childsupport.wisconsin.gov**. Most public libraries offer free Internet access.

Child Support - What the Paying Parent Needs to Know

Guidelines for Setting Child Support Payment Amounts

Grandparent Liability

Help Your Baby Get a Step Ahead

Legal Fatherhood: What Mothers Should Know

Medicaid, Child Support and Repaying Birth Costs

Payment of Child Support for Substitute Care

Review and Adjustment (Changing a Child Support Order)

Tax Intercept Program

When Teens Become Parents

The Wisconsin Child Support Program

Legal Terms

Legal terms can be confusing. These definitions might help you better understand the paternity process.

Alleged father: The man named by the mother to be the child's father or a man who believes he is the father and who brings a paternity action.

Children First Program: A program where the county or tribe may provide job search assistance, job skills training, basic education or work experience opportunities to parents who pay child support. The court must order a parent into the Children First Program.

Conceptive period: The period of time when a child was likely to have been conceived. For a normal pregnancy, it is a period of 60 days, about 240 to 300 days before a birth.

Custody: The authority given to one or both parents by the court to make major decisions regarding the child. One parent (sole custody) or both parents (joint custody) may have custody.

Guardian: A person other than the parent who is legally responsible for a child. Most children do not have a legal guardian. This only happens when a court gives legal custody to someone other than the parent(s).

Periods of Physical Placement: (also called visitation) Periods of time a child spends with a parent.

Primary Physical Placement: Where the child lives most of the time.

Petitioner: A person who brings a legal action or lawsuit, also called the plaintiff.

Respondent: A person against whom a court action is started, also called the defendant.

Temporary Assistance for Needy Families (TANF): A federal program that provides time-limited assistance to needy families with children.

Wisconsin Works (W-2): A state work program, funded by TANF, that helps parents find a job. W-2 provides help with child care, transportation, job training and education.

Who can I call for help?



Or

Contact your county or tribal child support agency (listed in your phone book under “County Government” or tribal name).

Child Support information is on the Internet at: **childsupport.wisconsin.gov**. Most public libraries offer free Internet access.

DWD is an equal opportunity employer and service provider. If you have a disability and need to access this information in an alternate format, or need it translated to another language, please contact (608) 266-9909 or (800) 947-3529 WTRS (Toll Free).